

2-13-2014

# Cazier v. Idaho State Dept. of Health and Welfare Appellant's Reply Brief Dckt. 41255

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

CHARLES DRAKE CAZIER

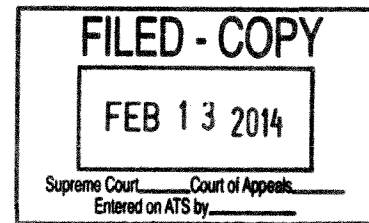
Plaintiff/Appellant

vs.

IDAHO DEPARTMENT OF  
HEALTH AND WELFARE

Defendant/Respondent

SUPREME COURT NO.:  
41255



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REPLY BRIEF

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APPEAL FROM DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI  
THE HONORABLE JOHN P. LUSTER PRESIDING

This brief is filed as a reply to the Respondent's brief. The Respondent has always argued and asserted that the department can not grant Certification as a Family Home until the applicant has passed a criminal background check.

Like wise the district court erred on page 10 of it's decision stating that "The Department's rule provides that certification can not occur until the criminal history check is cleared. The Department followed its rule by not approving the CFH until Cazier had cleared the criminal history check."

There are several things wrong with this argument. The most important being that that is not the issue on appeal. The issue on appeal is whether the Department could, should and in fact has backdated the effective date of enrollment by and through a form and process called "Provider Request to Backdate the Effective Date" which was requested by the Appellant.

The district court also erred on page 9 of it's decision when stating: "Enrollment in Medicaid and certification as a family home are two different processes and are determination made by two different entities."

The Idaho Department of Health and Welfare is the only entity that makes these decisions as well

as giving the criminal background clearance. These actions however are separate and apart. That is exactly why the department can grant a “Provider’s Request to Backdate the Effective Date”.

There are separate requirements in each of these processes. The requirements for obtaining a backdate of the effective date are on the form itself. The Appellant has met those two requirements. First, he has submitted the request in writing. Second, he has stated the justification for the back date of the effective date. The department has never disputed the justification nor could they.

Each and every error committed by the department as found in I. C. 67-5279 are not just reasons why the case should be remanded back to the department they are also each justifications of why the back date of the effective date should be granted.

The appellant completed all of the requirements which he was responsible for to obtain Certification as a family home. The department delayed and or stopped the process by it’s incorrect actions.

The district court erred early on when Judge Luster stated “Well I think the arbitrary and capricious standard that I am bound to evaluate this case on is by virtue of the agency’s action;

that is the hearing that was conducted by the department, not necessarily by some of the actions that they took along the way, but basically the ultimate determination that they made when they evaluated the case to determine whether or not to approve your request or not, not so much the initial behavior or actions by the department.” (Transcript of Oral Arguments April 9, 2013, pg 20 line 11.)

This is contrary to **143 Idaho 808 UNIVERSITY OF UTAH HOSPITAL v Ada County Board of Commissioners, Ada County, Idaho.**

In that decision the court found that the District Court erred in finding for the county when in fact; “Because Ada County failed to conduct a proper investigation prior to denying the application, we set aside the County's action and remand this matter to the Board of County Commissioners for further proceedings.”

Obviously the court should look to the actions leading up to the decision and outcome not just to the agency hearing and decision.

The similarities of this case continue. The agency in the above case argued that they could not pay the University hospital because the forms were not completed, because the patient was not

cooperative so the agency did not complete it's investigation. This is the same type of argument the Department is making here.

The department erred in denying criminal background clearance so the certification process was delayed. Then the department did not comply in any timely manner with the court's order when it was remanded back thus creating a further delay and prejudice. Then the department concludes that services rendered during that time can not be paid.

However using the department's own form and process an effective back date, independent of all other dates can be established from which date, services can then be billed. This was exactly what was done. The Department's notice of June 15, 2011 allowed the appellant to submit claim numbers 11172W0000005 and 1171W0004488 back to November 3, 2009.. There was no change in the background clearance date nor certification date nor enrollment date simply an establishment of an effective back date.

These claims would have been paid except for the department illegally voiding the claims without notice or justification to the provider. This was particularly arbitrary, capricious and an abuse of discretion as at that point the effective date was November 3, 2009. The department had not changed the effective date back to March 15, 2011 at the time it voided the claims.

The Respondent raises two issues in it's Response. It now objects to the inclusion of the briefs from the prior district court's decision to remand. However they did not object when the record was prepared.

Also, Judge Luster stated concerning that prior court action that he had "looked at the file. I'm not sure that it's germane to the Court's decision, which is a pretty limited scope here today, but I certainly understand the history of the original appeal or petition for judicial review..."

Thus the court being aware of the previous actions and knowledge of the briefs filed in that action, especially when pointed to by the petitioner, should have considered it as part of the record in reviewing the continuation of this matter currently before it. Likewise this court should consider the previous district court actions and filings.

I. C. 67-5279(3) If the action (note action not just decision) is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

The Respondent's also raised the argument in it's brief that it can not pay the appellant before the certification is completed (page 6). This argument is void of any logic. Of course the payment can not be made prior to that certification and enrollment. That has happened in the past there is no way to go back in time and pay for those services then. We are talking about payment now. After

the appellant has demonstrated and the department has agreed that the denial of background clearance was wrong from the beginning, after the application has been approved, after enrollment has been completed. The time for payment was when the Provider's Request to Backdate the Effective Date was first granted.

There simply was no reason that the CFH was not granted in November 2009 except for the errors of the Department. Once it was established that there was no crime committed to barr enrollment nor any other barr to enrollment the Department could, should and did establish an effective back date of enrollment to November 2009.

The district court already found that the Petitioner's rights had been significantly prejudiced in the non-payment for the services rendered. The only remaining fact to be established was that the actions of the department in relation to the Provider's Request to Backdate the Effective Date were:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence in the record as a whole: or
- (e) arbitrary, capricious or an abuse of discretion.

Remembering that all of the Department's actions in relation to this entire matter are to be



reviewed by the court it is obvious that the Department violated all of these at one point or another.

These were put forth in the Appellant brief and will not be reiterated here. It is sufficient to say that the Respondent's brief did not raise any dispute to the Appellant's arguments but simply continues with its assertion that the Certification as a family home can not be granted until the department has complete the criminal back ground check. As stated at the beginning that is not the question on appeal.

What is the purpose of a form and process of a Provider's Request to Backdate the Effective Date if it can only be back dated to the already established date IE completion of the enrollment process?

The conclusion to remand back to the department should have been a simple matter for the district court if the entire record were considered and the issue of the Provider's Request to Backdate the Effective Date had been properly addressed.

The instructions to the department on remand are likewise not so difficult. The district court or this court can simply state that the department has never raised in evidence or at law a logical reason

the department can not approve the requested effective back date for enrollment in the medicaid system. Nor any reasonable objection to the justification which was stated on the form at the time of the request.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'C. Drake Cazier', with a stylized, cursive script.

C. Drake Cazier

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Appellant's Brief was

  X   mailed, with first class postage prepaid thereon;

           hand delivered;

           Emailed

on the 11th day of February, 2014 TO:

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